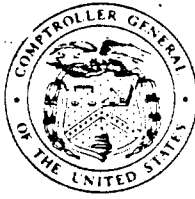


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

61055

FILE: B-185933

DATE: June 30, 1976

MATTER OF: System Innovation & Development Corp.

98370

DIGEST:

Where record shows that evaluation of proposals was in accordance with established criteria and was based on reasoned judgment of evaluators, protest based upon offeror's disagreement with evaluation is denied because determination of relative merits of proposals is responsibility of contracting agency and will not be disturbed unless shown to be arbitrary or contrary to statute or regulations.

System Innovation & Development Corp. (System) has protested the rejection of its proposal as outside the competitive range by the National Aeronautics and Space Administration, Langley Research Center (Langley), under request for proposals (RFP) 1-05-3871.0011 for general aviation low-speed airfoil design and development services on a cost-plus-fixed-fee basis.

The RFP was issued to 25 firms, 19 of which responded with proposals. The proposals were evaluated in accordance with the National Aeronautics and Space Administration Procurement Regulation 3.804-2 (1975 ed.), Evaluation Procedures Not Involving Source Evaluation Board. After a preliminary evaluation, four proposals were rejected as not representing a reasonable attempt to address the requirements of the RFP. The remaining 15 firms, including System, were given full technical evaluations. Pursuant to this evaluation, it was determined that System was not among the three offerors within the competitive range. It was further determined that the prices of two of the offerors within the competitive range were so high that neither could substantially reduce its price and remain technically competitive. Therefore one proposal, that of Ohio State University, was selected for negotiation.

The RFP solicited "all personnel, facilities, services, equipment, and materials (other than those furnished by the Government) necessary for a general aviation low-speed airfoil design and development service. * * *" Outlining the purpose of the procurement, the RFP stated:

"After the development of full operational capability in the use of the computer programs and suitable demonstrations of the aerodynamic interpretation skills required, the Contractor shall provide services to industry on a fee charge basis, in the design and development of new advanced low-speed 2-D airfoil shapes, including high-lift systems and controls, technical assistance and consultation services for the General Aviation Industry, and compilation of predicted airfoil characteristics.

"NASA personnel will be available for consultation and assistance during the buildup of operational capability at the Contractor's facility, will provide the basic computer programs to be used and will train qualified Contractor personnel, if required, in the use of these programs. NASA will also provide computer program updates, optimization packages, design routines, and new computer programs as improved programs are developed by NASA or its contractors. Any improvements in the program routines and procedures developed by the Contractor during this contract shall be documented and provided to the Government after such improvements are operational."

The technical evaluation criteria (in summary form) were listed as follows:

1. Understanding the problem
2. Assignment of qualified personnel
3. Adequacy of facilities and equipment
4. Adequacy of contractor management system

The RFP noted that items 1 and 2 had an equal weighting factor considerably higher than 3 and 4, which also had an equal weighting factor.

System received low ranking in all criteria because Langley's Technical Evaluation Team viewed System's proposal as misunderstanding the purpose of the contract, concentrating effort on development of improved computer codes rather than providing services to the general aviation industry.

System takes issue with this evaluation, arguing that the RFP did in fact envisage development of improved computer systems, that Langley was "overly negative and not appreciative" of System's proposed improved computer code tasks which would inure to the benefit, not detriment, of the users, that it was improperly downgraded for its failure to provide services sooner than 18 months after award and for its failure to provide a program staffed with qualified personnel 40 hours per week, and that it should have received a more favorable evaluation in light of the fact that it was the lowest offeror of the top five contenders.

Concerning this first contention that the RFP did envisage a proposal detailing the development of new computer codes, upon reading the RFP statement of the purpose of the procurement, supra, it is clear that its primary purpose was to provide airfoil services to the general aviation industry and that development of new computer programs by the contractor rather than Langley was but an incidental factor. Taken in context, the sentence concerning "improved programs" is not, as System argues, confusing or misleading. Langley has explained that the sentence merely "recognizes that the selected contractor may find more efficient numerical procedures and/or sub-routines while performing work on his particular equipment."

Next System claims that Langley's assertion that the System proposal misunderstood the RFP reflects the agency's misinterpretation of the proposal. System argues that despite Langley's finding of insensitivity toward user needs in the System proposal, System placed user benefits in the highest priority. System challenges the evaluation as "overly negative and not appreciative of its proposed improved computer code tasks," which, System argues, would benefit the user. Langley has justified its evaluation, stating:

"* * * [System] failed to understand the primary thrust of the RFP which was to provide general aviation low-speed airfoil design and development services through the use of Government-furnished computer programs. This lack of understanding * * * is evidenced by [System's]

proposed effort to develop improved computer codes; their proposed 18-month development period requisite to providing user services which was unacceptable in view of the urgent need for the services; and an organization and staff ill-suited because of lack of depth, part-time employment, a proposed manager with no visible background in low-speed 2-D airfoil aerodynamics, and unidentified mathematicians and computer system personnel whose qualifications were perforce unknown."

System takes exception to the issues Langley cites as evidence of System's misunderstanding of the procurement, i.e., the 18-month wait for commencement of services and the absence of 40-hour per week staffing. System claims that "undue haste" would be detrimental to the contract and that in any case, had time been of the essence, the RFP should have indicated this clearly. Langley explains its position as follows:

"The RFP did not specify a time by which the selected contractor was to provide user services because it was recognized * * * that potential offerors had varying degrees of capability and that the time after contract award required to provide user services was therefore variable. However, * * * the urgency of the need for the services is implicit in the * * * RFP statement of work which reads: 'Such resources as these are not typically found within the General Aviation Industry, yet their needs for information on advanced airfoils, tailored to meet their particular requirements, are great when consideration is given to competition from foreign companies.' The NASA requirement for services earlier than 18 months is also expressed in the * * * RFP Proposed Contract Schedule [which required the contractor to submit a report covering services performed and identification of users 11 months after awards]."

System also contests the wisdom of Langley's desire for staffing of the program on an 8-hour day, 40-hour per week basis. System asserts that "such a practice would be wasteful in comparison to [its] proposal to provide flexibility in personnel hours commensurate with users' needs and demands." Langley has justified its position as follows:

"* * *[T]o be of meaningful service to the general aviation industry, the program contracted for should be staffed with well-qualified personnel available to service users on an 8-hour day, 40-hour week basis. Thus, to be user oriented, the contractor's technical staff should have the capability of providing the full spectrum of expertise on a continuous basis, notwithstanding vacations, sickness, unforeseen circumstances, etc. The staff offered by [System] could not adequately satisfy this requirement because of its part-time character * * * and more importantly, because their proposal failed to show skill redundancy through corporate back-up resources or through overlap of expertise within the proposed staff."

Finally, System asserts that its position as the lowest offeror of the top five contenders warrants more favorable consideration. Langley has shown that System's cost could not be counted as a strong point in its proposal:

"Because of [System's] proposed effort to improve computer codes, an effort not required by the RFP, [System] was not fully responsive to NASA's requirements in that they proposed to do work which was not authorized. Thus the cost proposed for such work, together with additional unknown costs which would be incurred if staffing and other deficiencies were susceptible to correction rendered their proposed cost unrealistic. The fact that the proposed cost was lower than that proposed by Ohio State University was irrelevant because the cost was, to a degree, for something not required by NASA as well as for a program which would not otherwise satisfactorily fulfill the objectives of the RFP."

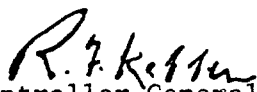
Furthermore, our Office has held that the question of cost may not be considered in determining whether an offer is within the competitive range unless the offer is first deemed technically acceptable, which is not the case here. See Pacific Training & Technical Assistance Corporation, B-182742, July 9, 1975, 75-2 CPD 22.

In resolving cases in which a protester challenges the validity of a technical evaluation, it is not the function of our Office to evaluate proposals in order to determine which should have been

selected for award. The determination of the relative merits of proposals is the responsibility of the contracting agency, since it must bear the burden of any difficulties incurred by reason of a defective evaluation. Accordingly, we have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and that such determinations are entitled to great weight and must not be disturbed unless shown to be arbitrary or in violation of the procurement statutes and regulations. See Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404; Donald N. Humphries & Associates, et al., 55 Comp. Gen. 432 (1975), 75-2 CPD 275, and the cases cited therein.

Langley has documented the findings upon which the challenged evaluations are based. We have reviewed this record in light of System's allegations and see nothing in the record which indicates that the evaluation was improper or unfair or that the Technical Evaluation Team was arbitrary in evaluating the proposals as it did. To the contrary, it appears that the Technical Evaluation Team rated the proposals on the basis of the reasoned judgment of its members and in accordance with the established evaluation criteria. The fact that the protester does not agree with that judgment does not invalidate it. See Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87; Houston Films, Inc., supra.

For the foregoing reasons, the protest is denied.


Deputy Comptroller General
of the United States